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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/354,970	07/16/1999	JOHN R. DOUCEUR	1610	5820

7590   12/12/2003

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EXAMINER
NGUYEN, DUSTIN

ART UNIT	PAPER NUMBER
2154	

DATE MAILED: 12/12/2003   *14*

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

Office Action Summary	Application No 09/354,970	Applicant(s) DOUCEUR ET AL.
	Examiner Dustin Nguyen	Art Unit 2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _17 November 2003_.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-44_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _32-39_ is/are allowed.

6)☒ Claim(s) _1-44_ is/are rejected.

7)☐ Claim(s) _3-9_ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

    a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4)☐ Interview Summary (PTO-413) Paper No(s). _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: .

DETAILED ACTION

1.   Claims 1 – 44 are presented for the examination.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3.   Claims 1-5, 7, 9-17, 19-33, 35-44 are rejected under 35 U.S.C. 102(e) as being

anticipated by Hales, II et al. [US Patent No 5,938,723].

4.   As per claim 1, Hales discloses the invention substantially as claimed including a

computer-readable medium having computer-executable instructions, comprising:

executing a background task [col 11, lines 62-66],

receiving data from a software component indicative of a measured progress of the

background task relative to the past performance data [col 11, lines 29-38; and col 12, lines 1-3

],

and determining when to again execute the background task based on the data [Figure

8a-c; and col 10, lines 54-67].

5.   As per claim 2, Hales discloses

suspending the background task for a suspend time [col 11, lines 29-34],

and authorizing the background task to again execute [col 6, lines 8-15].

6.   As per claim 3, Hales discloses comparing the measured progress of the background task

against a target progress, the target progress based on data measured from previously running the

background task [col 11, lines 40-53; and col 12, lines 1-3].

7.   As per claim 4, Hales discloses determining a suspend time for suspending the

background task [col 11, lines 50-53].

8.   As per claim 5, Hales discloses wherein if the measured progress with respect to the

target progress is acceptable, setting the suspend time to a relatively low duration [Figure 8C;

and col 12, lines 36-45].

9.   As per claim 7, Hales discloses wherein if the measured progress with respect to the

target progress is not acceptable, increasing the suspend time [col 10, lines 66-67].

10.   As per claim 9, Hales discloses wherein if the measured progress with respect to the

target progress is not determinable by present data, maintaining the suspend time [col 12, lines

61-65].

11.   As per claim 10, Hales discloses determining a suspend time for suspending the

background task [col 12, lines 36-54], and wherein the suspend time is further based on a

relative importance of the task [col 2, lines 56-67].

12.   As per claim 11, Hales discloses statistically combining the data received with previous

data [col 12, lines 14-17].

13.   As per claim 12, Hales discloses a target value indicative of a target amount of work [col

11, lines 33-36 and lines 64-67], and wherein determining when to again execute the

background task includes comparing the measured progress of the background task against the

target value [col 12, lines 11-18].

14.   As per claim 13, Hales discloses using measure progress data to automatically calibrate

the target value [col 14, lines 53-60].

15.   As per claim 14, Hales discloses the measured progress comprises an amount of work

performed per unit time [col 11, lines 4-6].

16.   As per claim 15, Hales discloses the background task is executed for a limited time [col

12, lines 23-25], and the data include a count of the operations performed during the limited

time [Abstract].

17.   As per claim 16, Hales discloses the data includes total real time taken for the operations

to complete [col 17, lines 9-12].

18.   As per claim 17, Hales discloses a parameter representing the relative amount of work

performed by each operation [col 11, lines 33-36].

19.   As per claim 19, Hales discloses the background task performs input/output operations on

a resource [col 3, lines 54-col 4, lines 16].

20.   As per claim 20, Hales discloses prioritizing an execution of at least one other task [col

15, lines 66-col 16, lines 8].

21.   As per claim 21, it is rejected for similar reasons as stated above in claim 1.

22.   As per claims 22-29, they are rejected for similar reasons as stated above in claims 10-17.

23.   As per claims 30, 31, they are rejected for similar reasons as stated above in claims 19,

20.

24.   As per claim 32, it is method claimed of claims 1-3, it is rejected for similar reasons as

stated above in claims 1-3.

25.   As per claim 33, it is method claimed of claim 14, it is rejected for similar reason as

stated above in claim 14.

26.   As per claim 35, it is rejected for similar reason as stated above in claim 13.

27.   As per claims 36-38, they are method claimed of claims 15-17, they are rejected for

similar reasons as stated above in claims 15-17.

28.   As per claim 39, it is program product claimed of claim 32, it is rejected for similar

reasons as stated above in claim 32.

29.   As per claims 40 and 41, Hales discloses receiving an indication of acceptable

performance and unacceptable performance [col 12, lines 57-col 13, lines 6]

30.   As per claims 42 and 43, they are rejected for similar reasons as stated above in claims

40, 41.

31.   As per claim 44, Hales discloses an indication of more information being needed [col 11,

lines 1-9].

Claim Rejections - 35 USC § 103

32.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

33.   Claims 6, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hales, II et al.

[US Patent No 5,938,723], in view of Annapareddy et al. [US Patent No 6,101,194].

34.   As per claim 6, Hales does not specifically disclose wherein setting the suspend time to a

relatively low duration includes setting the suspend time to a minimum value. Annapareddy

discloses wherein setting the suspend time to a relatively low duration includes setting the

suspend time to a minimum value [col 6, lines 41-50]. It would have been obvious to a person

skill in the art at the time the invention was made to combine the teaching of Hales and

Annapareddy because Annapareddy's teaching of setting the suspend time would allow to

dynamically adjust the suspend or delay time according to system to improve speed and

performance.

35.   As per claim 8, Annapareddy discloses wherein increasing the suspend time includes

doubling a previous suspend time [col 1, lines 41-43].

36.   Claims 18 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hales,

II et al. [US Patent No 5,938,723], in view of Thompson et al. [US Patent No 5,822,584].

37.   As per claim 18, Hales does not specifically disclose the background task is part of a

process for recognizing duplicate files on a file system partition, and wherein the amount of work

performed by each operation is an amount of data read from the partition. Thompson discloses

the background task is part of a process for recognizing duplicate files on a file system partition,

and wherein the amount of work performed by each operation is an amount of data read from the

partition [col 1, lines 26-53]. It would have been obvious to a person skill in the art at the time

the invention was made to combine the teaching of Hales and Thompson because Thompson's

teaching would allow to keep information up to date for data consistency.

38.   As per claim 34, it is method claimed of claim 18, it is rejected for similar reason as

stated above in claim 18.

39.   Applicant's arguments with respect to claims 1-44 have been considered but are moot in

view of the new ground(s) of rejection.

40.   A shortened statutory period for response to this action is set to expire **3 (three) months
and 0 (zero) days** from the mail date of this letter. Failure to respond within the period for
response will result in ABANDONMENT of the application (see 35 U.S.C 133, M.P.E.P
710.02, 710.02(b)).

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Dustin Nguyen whose telephone number is (703) 305-5321. The

examiner can normally be reached on Monday – Friday (8:00 – 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (703) 308-9678.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directly to the receptionist whose telephone number is (703) 305-3900.

Dustin Nguyen

MENG-AL T. AN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100